HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 286 of 2006

Between:

The Divisional Forest Officer,

Karimnagar West Division,

Karimnagar and others .. Appellants

AND

Khaja Raheemuddin. ..Respondent.

Counsel for the Appellants: Govt. Pleader for Forests

Counsel for the Respondent: Sri K.Vasudeva Reddy

Dated: March 21, 2006

JUDGMENT:

Per G.S.Singhvi, C.J.

This appeal is directed against order dated January 4, 2006 passed by the learned Single Judge in Writ Petition No. 22981 of 2005, whereby he directed the non-petitioners (appellants herein) to release M/s Raheemuddin and Brothers Saw Mill,

Dharmapuri to the petitioner and pass appropriate order pursuant to show cause notice dated May 24, 2005.

Respondent – Sri Khaja Raheemuddin is the sole proprietor of M/s Raheemuddin and Brothers Saw Mill, Dharmapuri, which was established by his father some time in 1976 after obtaining licence from Divisional Forest Officer, Karimnagar West, Karimnagar (appellant No.1 herein), as required by A.P. Saw Mills (Regulation) Rules, 1969 (for short 'the Rule'). The mill was inspected by Forest Range Officer, Special Party, Jagityal, Karimnagar (appellant No.2) on 15.5.2005. He is said to have found variation in the quantities of the raw material and finished goods. He seized saw mill of the respondent and submitted report dated 18.5.2005 to appellant No.1. The latter issued notice dated 24.5.2005 whereby he called upon the respondent to show cause against the proposed cancellation of licence and confiscation of timber and plant involved in the offence and further show cause as to why penal action may not be taken under Rules 7 and 9 of the Rules read with Sections 20 and 29 of the A.P. Forest Act, 1979 (for short 'the Act') for violation of Rule 5 of A.P. Forest Produce Transit Rules, 1970 (for short 'the 1970 Rules'). The respondent submitted reply dated22.8.2005 to contest the notice. However, appellant No.1 did not pass any order. This necessitated filing of writ petition by the respondent for issuance of a direction to the non-petitioners (appellants herein) to release the mill. He pleaded that action taken by respondents 1 and 2 was not only ultra vires to the provisions of the Act and Rules but was also violative of the principles of natural justice.

In the counter-affidavit filed by appellant No.1, it was pleaded that order for seizure of the mill including plant and machinery was passed because of several irregularities committed by the writ petitioner.

On a consideration of the pleadings of the parties and analysing the relevant statutory provisions, the learned Single Judge held that in exercise of power under Rule 9 of the Rules, the competent authority can confiscate forest produce together with whole or portion of the plant, machinery, implements and equipments used for commission of the offence, but cannot seize the mill.

We have heard learned counsel for the parties and perused the record. Rule 9 of the Rules which has bearing on the decision of this appeal, read as under:

"9. (1) Notwithstanding anything in the foregoing rules, the licensing authority may, where he has reason to believe that a licensee is operating a saw mill in contravention of the (Provisions of the Andhra Pradesh Forest Act, 1967 or any rules made thereunder) at any time, revoke the licence granted under these rules, after giving the licensee an opportunity of being heard.

(2) (a) For any violation of the provisions of the Andhra Pradesh Forest Act, 1967 or the rules made thereunder by the licensee the (licensing authority or divisional Forest Officer, Flying Squad Party) shall be competent to seize and confiscate forest produce together with whole or portion of the plant, machinery, implements and equipments which have been used in the commission of the of the offence;

(b) In case of violations, where it is not proposed to either revoke the licence or seize and confiscate the plant, machinery etc., the licencing authority shall be competent to impose a penalty of a sum up to the limit of available security deposit. If the amount of penalty so levied exceeds Rs.1,000/-, an appeal against such imposition shall lie with the Conservator of Forests having territorial jurisdiction over the area, and his decision, thereon shall be final. The appeal should however be preferred within fifteen days from the date of dispatch of the order, imposing penalty, by registered post.

(c) All penalties levied shall be paid by the licencee within fifteen days from the date of dispatch by registered post of the order or the notice of demand for payment. In case of failure to pay the penalties in time, the same will be adjusted from the security deposit, which shall be replenished immediately so as to keep it always full and complete. The licence shall be deemed to be inoperative, until such time, the licensee replenishes the adjustments in the security deposit.

(3) In the event of revocation of licence under sub-rule (1) or seizure and confiscation of forest produce together with whole or portion of the plant, machinery, implements and equipments under sub-rule (2), the licensing authority shall be competent and shall be at liberty to forfeit security deposit in part of whole."

A reading of the plain language of the above re-produced rule makes it clear that the same does not empower the concerned authorities to order seizure of the mill. Therefore, we are inclined to agree with the learned Single Judge that the action taken by appellant No.1 to order seizure of the mill was ultra vires to the relevant statutory provisions.

At this stage the learned Government Pleader submitted that the competent authority

would pass appropriate orders in pursuance of the show cause notice dated May 24, 2005 and till then the Court may restrain the respondent from operating the saw mill.

Learned counsel for the respondent very fairly states that if the show cause notice is finalized within a reasonable time, his client will not operate the saw mill.

In view of the above, we dismiss the appeal with the direction that within two weeks from today the competent authority shall pass appropriate order in furtherance of show cause notice
dated May 24, 2005 and till then the respondent shall not operate the saw mill. This would necessarily mean that if the competent authority fails to pass appropriate order within two weeks from today, then the appellant shall be free to operate the saw mill.

G.S.SINGHVI, C.J.

March 21, 2006

G.BHAVANI PRASAD, J.

GRR/vtv

Note: The Court Officer is directed to give attested copies of this order to the learned counsel for the parties.

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